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NORESAH LANI

v.

RHB BANK BHD

B

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL WAHAB SAID AHMAD J
[CIVIL SUIT NO: D8-22-1370-2005]
19 APRIL 2006

C ***CIVIL PROCEDURE:*** *Injunction - Injunction to restrain bank from auctioning off property - Housing loan - Plaintiff not in total neglect to repay loan - Balance of convenience - Whether in favour of granting injunction - Failure to supply plaintiff with statement of accounts - Whether a serious issue to be tried*

D The plaintiff had taken a housing loan of RM107,000 from one Kwong Yik Finance Bhd ('Kwong Yik'), whose interest was later vested in the defendant. The plaintiff had not been regular in the repayment, but had, over the years, made substantial payment to the defendant. Subsequently, following the vesting in, the plaintiff made inquiries with the defendant about the status of the loan and requested that the E defendant supply her with the statement of account of the loan. The defendant refused to oblige, justifying the refusal on the plaintiff's default in repaying the loan. Thereafter, the defendant also sent a notice to the plaintiff recalling the entire loan, and failing that, filed a suit in the Sessions Court to recover the said sum (standing at RM124,000 then). F Further, an application was made to auction off the plaintiff's house. Aggrieved, the plaintiff sought an injunction to restrain the defendant from selling her property or proceeding with the case in the Sessions Court, and for an order that the defendant supply her with monthly statements of the loan.

G **Held (Granting order in terms of application):**

(1) This is not a case where the plaintiff had been in total neglect, default or failure to pay the instalments. She had been paying and had paid before and after the rights of Kwong Yik was vested in H the defendant. The payment had not been regular when at one stage there was a variation in interest rate and at a later stage the instalment was increased. This being the case, there is a serious question to be tried, namely as to whether the defendant was or was not obliged to supply the plaintiff with the said statement of accounts. (para 19)

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(2) The balance of convenience lies in favour of granting this injunction since the loss to the plaintiff's property if it were to be auctioned off could not be compensated by damages. On the other hand, the plaintiff is not being unreasonable in her claim for the defendant to supply her with the statement of accounts from the time the loan was granted by Kwong Yik. The statement of accounts, if given, would be a running account and it would show the status of the loan from its inception right until the current stage. (para 20)

(3) The court would agree with the plaintiff that in the absence of the detailed statement of accounts dating back to the time before the vesting took place, the auction, if allowed to proceed, would not be right in law since the redemption statement would not be accurate. (para 20)

For the plaintiff - Jennifer Chandran; M/s Vaasan Chan & Chandran
For the defendant - Annon Xavier (SK Kee with him); M/s Lee Swee Seng

Reported by Rose Aziz

JUDGMENT

Abdul Wahab Said Ahmad J:

[1] The plaintiff filed an application in encl. 4 for an injunction to restrain the defendant from selling the plaintiff's property known as Unit No. 211, Storey 3 of Building No. W, Road SS15/8, Phase SJ85, My Place, with an address at 211W, Jalan SS15/8, 47500 Subang Jaya, by way of public auction, foreclosure or in whatever manner. The plaintiff also prays for an order that the defendant within 14 days from the date of the order supply the plaintiff with monthly statements of the loan under the agreement between the plaintiff and Kwong Yik Bank Berhad dated 11 May 1991 from the date of commencement of the loan until the date of the order. Further, the plaintiff prays for an injunction to restrain the defendant from proceeding with the case in Kuala Lumpur Sessions Court No: 8-52-15686-2005 until the disposal of this case.

[2] The plaintiff had entered into a loan agreement cum assignment with Kwong Yik Finance Bhd ("Kwong Yik") on 11 May 1991 for a housing loan of RM107,000. Subsequently all of Kwong Yik's rights had been vested in the defendant. In view of the vesting, the plaintiff had on 11 February 2003 made inquiries to the defendant about the status of the loan. The defendant had required the plaintiff to forward a copy of the letter of offer from Kwong Yik. The defendant did supply the letter of offer on 18 February 2003. On 19 February the defendant wrote to the plaintiff saying that they are looking into the plaintiff's inquiry.

[3] On 22 February 2003 the defendant wrote to the plaintiff claiming for the amount of RM2,777.21, purportedly arrears as at 25 November 2002. The plaintiff promptly replied saying that there are no arrears outstanding and requested that the defendant supply her with statement of accounts from the commencement of the loan. The plaintiff had by her letter dated 29 April 2003 requested to see the defendant's officer about the account. The defendant did by its letter dated 29 April 2003 request that the plaintiff see its officer. During the meeting, the officer said that the bank will give a clarification as to the plaintiff's account status.

[4] The defendant did not send any clarification, so the plaintiff sent a reminder dated 29 September 2003. Even though the defendant has failed to send any clarification or send any statement of accounts, the defendant sent a notice of demand dated 16 December 2003 for RM5,811.26. The plaintiff denied the debt by letter dated 26 December 2003. The plaintiff sent another letter dated 25 February 2004 for a clarification. The defendant did not reply but reciprocated by sending a notice of recall dated 25 November 2004 claiming for the entire loan amount, including interest and late payment charges that came up to RM124,050.64.

[5] The plaintiff by her solicitors' letter dated 22 December 2004 disputed that there are any arrears outstanding that would entitle the defendant to terminate the agreement and asked the defendant to withdraw the notice of recall. At the same time when the plaintiff wanted to make payment at the defendant's branch in One Utama, she was prevented from doing so and was directed to the branch that handled her loan. The officer there asked the plaintiff to restructure the loan but the plaintiff refused. On 8 July 2005, the defendant sent a letter asking the plaintiff to deliver vacant possession of her property and that the defendant is going to auction it off. She was also informed that the strata title had been issued and was told to sign it; otherwise the defendant will sign it and proceed with the sale. At the same time the defendant filed an action in the KL Sessions Court for the loan amount.

[6] The plaintiff said that the defendant should not be allowed to proceed with the sale because the redemption statement would not be correct, in view of the fact that it had failed to supply the plaintiff with the statement of accounts when requested.

[7] The defendant in its affidavit-in-reply stated that the rights of Kwong Yik Bank Berhad were vested to RHB Finance Berhad (previously known as DCB Finance Berhad) through an Order of the High Court of Kuala Lumpur in Ex-Parte Originating Summons No: Dl-24-155-97 dated 23 June 1997. The rights of RHB Finance Berhad

was then vested to the defendant through Ex-Parte Originating Summons No: D2-24-279-98. The defendant contended that the plaintiff had admitted this since she had continued paying to the defendant.

[8] The defendant stated that at all material times the plaintiff had defaulted in payment but had failed or refused to pay the amount owing. In view of this, the defendant contended that it is not obliged to supply the plaintiff with all the statement of accounts when it is the plaintiff's duty to ensure that she makes the repayment according to the current rate of interest monthly.

[9] The defendant contended that if the plaintiff had been paying regularly it would have sent the statement of accounts every month and the amount accrued would have been clearly stated. It was said to be an implied term that if the plaintiff wanted to raise any discrepancies, she should have contacted the defendant within 14 days. The plaintiff claims that it had informed the plaintiff of any amount owing and any variation in interest by letter ("CCY2").

[10] Referring to the said exhibit the defendant said that the plaintiff had been informed a total of four times about the variation in interest rates. By a letter dated 4 September 1991, the plaintiff was informed of an increase in interest rate from 8.25% to 10.25%. By a letter dated 8 January 1992 from 10.25% to 10.50%. By a letter dated 16 June 1992 from 10.50% to 11.0%. Lastly by a letter dated 4 August 1992 the plaintiff was informed that because the BLR was increased to 10.75% the plaintiff's interest was raised to 11.25%. The plaintiff said that the BLR is based on the BLR fixed by Bank Negara and is public knowledge.

[11] After the plaintiff was informed of the variation in interest rates, the defendant claimed that the plaintiff had not been regular in repaying. The defendant therefore wrote a letter to the plaintiff dated 12 November l992 and 25 May 1993 informing the plaintiff that there was a balance of RM1,799.43 unpaid. The defendant also sent a letter dated 28 June 1993 through its solicitors claiming for the amount of RM3,313 that was due from the plaintiff. When the plaintiff failed to pay the amount due, the defendant instructed its solicitors to proceed with foreclosure proceedings. Charges incurred from the proceedings were to be borne by the plaintiff as provided in the loan agreement cum assignment.

[12] The defendant had on 14 January 1995 sent a letter through its solicitors made a demand on the plaintiff, followed by a letter dated 8 February 1995. Subsequent to that the plaintiff through a letter dated 13 February 1995 made a proposal for repayment and the defendant accepted the proposal by its letter dated 22 February 1995. The

A 1st payment under this new proposal was by a letter dated 13 February 1995. The correspondence is marked as "CCY6". In view of this the public auction was called off by the defendant.

[13] The plaintiff was then again found to have defaulted in repayment and the defendant had sent letters dated 1 June 1995, 25 August 1995, 16 August 1993 and 1 September 1995 to the plaintiff about this.

[14] Through its letter dated 15 December 1995 the defendant raised the instalment that was supposed to be paid by the plaintiff since she had not been making the repayment as scheduled regularly. The defendant claimed that at all material times the defendant had been complying with the Bank Negara rates. The defendant demonstrated this by exhibiting a letter dated 28 August 1995 ("CCY") that there was a reduction in interest rate from 11.25% to 1.25% with BLR (ie; 8.95% at that time) at monthly rests.

[15] As for the plaintiff's allegation that she was turned away when she wanted to make repayment, the defendant replied that as soon as a loan not repaid and a "notice of recall" of the entire loan is sent, as the defendant did by its solicitor's letter as in "NL9", the defendant is not obliged to accept any repayment save for the entire amount that is outstanding.

[16] The defendant reiterated that it is not reasonable to supply the plaintiff with the Statement of Account from the time that the plaintiff had taken the loan since the plaintiff was well aware that she still have to pay even if there is an increase in interest rate. If the repayment is not made according to schedule and there are arrears, late payment charges will be imposed and there will also be an increase in interest for the entire loan amount. The defendant stresses that a statement of accounts signed by two of its officers is conclusive agreed by the plaintiff and cannot be questioned.

[17] The defendant stated that it had incurred expenses in filing the suit in the Sessions Court. The summons was struck out by the Sessions Court Judge when the learned judge refused to allow a postponement pending the disposal of the matter in this court.

[18] On 21 September 2005, the day that was fixed for the hearing the parties came before me, Mr. Annon Xavier, learned counsel for the defendant informed me that he had advised his client to put off the Public Auction. Ms. Jennifer Chandran, learned counsel for the plaintiff did not agree to a postponement and was desirous that the court grant her application in encl. 4. Upon going through the plaintiff's application and the affidavits filed and hearing learned counsels on both sides, I granted an order in terms of the plaintiff's application in encl. 4.

[19] I did so because I felt that this is not a situation where the plaintiff had been in total neglect, default or failure to pay the instalments. The defendant in its own affidavit had admitted that the plaintiff had been paying. She had paid before and after the rights in Kwong Yik Bank Berhad was vested in the defendant. The payment had not been so regular when at one stage there was a variation in interest rate and at a later stage the instalment was increased. I believe there is a serious question to be tried in that the defendant had insisted time and again that it was not obliged to supply the plaintiff with the statement of accounts that she had requested. Instead the defendant is saying that it is the plaintiff who should have taken the trouble to keep abreast of the appreciation and depreciation of interest rates. At one stage the defendant had stated that it had done what is to be expected of it, in that the statement of accounts had been regularly sent and it is the plaintiff who should take action to point out any disparities to the defendant within 14 days from the receipt of the statement of accounts.

[20] I also find that the balance of convenience lies in favour of granting this injunction since the loss to the plaintiff's property if it were to be auctioned off could not be compensated by damages. On the other side of the divide, I think that the plaintiff is not being unreasonable in her claim for the defendant to supply her with the statement of accounts from the time that the loan was granted by Kwong Yik Bank Berhad. The statement of accounts if given would be a running account and it should show the status of the loan from its inception right until the current stage. The fact that the request is not unreasonable and not impossible to meet can be seen from the defendant's own words in its affidavit-in-reply. It had stated that preparation for the case took time because it had to retrieve all the files concerning the plaintiff's loan right from the time that she took it from Kwong Yik Bank Berhad. If the defendant can do that, I do not see why they cannot do the same in meeting the plaintiff's request for the statement of accounts. I agree with the plaintiff that in the absence of the detailed statement of accounts dating back to the time before the vesting took place, the auction, if it had been allowed to proceed, would not be right in law since the redemption statement would not be accurate.

[21] For the above reasons, I decided encl. 4 in favour of the plaintiff with costs.